CLEMENZA LAW GROUP

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THE PRIVATE BRIEF · CHECKLIST

# The Startup Legal Checklist

This is the folder an investor's lawyer will ask for, listed in the order the documents come into existence. A complete one can be worked through without a scavenger hunt. Each unticked line is a task, and most are cheaper now than later.

The explanation behind each item is in the Founder's First-Year Legal Handbook on this shelf.

## Formation

- [ ] **Certificate of incorporation or articles of organization, and any amendments**

  The document that created the company, as filed, with the state's stamp.

- [ ] **Bylaws (corporation) or a written operating agreement (LLC)**

  The rules of the company. New York requires an LLC's operating agreement to be in writing.

  > The template for a single owner is the wrong document when there are co-founders.

- [ ] **Federal tax number and state employer registrations**

  The EIN confirmation and the New York registrations if anyone is paid here.

- [ ] **For a New York LLC: the certificate of publication**

  Proof that the six weeks of newspaper notices were run, filed within 120 days of the articles of organization taking effect.

  > Skipped constantly, and the company's authority to do business is suspended until it is done.

- [ ] **For a company formed elsewhere: authority to do business in New York**

  The foreign qualification filing, if the company has an office or people here.

## Founders

- [ ] **A share (or unit) purchase agreement for each founder, with vesting**

  Typically four years, one-year cliff, and a company right to buy back unvested shares on departure.

- [ ] **Proof of each founder's 83(b) election**

  IRS Form 15620, filed within thirty days of the shares being transferred, with the mailing receipt and the IRS acknowledgement.

  > Filing late does not get you the election late. If the thirty days have run, ask a tax adviser that week.

- [ ] **An intellectual property assignment from each founder**

  Of everything created before formation for the business, and an agreement to assign what comes next.

- [ ] **A shareholders' agreement or the founder terms of the operating agreement**

  Roles, decision rights, tie-breaks, transfers, what happens when someone leaves, and how deadlock is broken.

## Board and company records

- [ ] **The organizational consent and every board consent since**

  Officers elected as of their real start dates; every share issuance and option grant approved individually; anything signed between meetings ratified.

  > In New York and Delaware a written consent needs every director's signature, not a majority.

- [ ] **Shareholder approval of the equity plan**

  Within twelve months of the board adopting it, so employee options get the tax treatment they expect.

- [ ] **The current valuation supporting option exercise prices**

  Refreshed at least yearly and after any financing.

- [ ] **A cap table that traces to the minute book**

  Every line supported by a signed consent and a signed purchase or grant agreement.

- [ ] **State filings: the biennial statement, and the annual franchise tax (and Delaware's, if formed there)**

  The biennial statement falls in the anniversary month of formation, every two years.

## Contracts

- [ ] **The customer agreement template, and every signed customer contract**

  With the liability cap, the indemnity, the ownership and feedback clauses, termination and renewal read and understood.

- [ ] **Every vendor contract, with its renewal notice date in a shared calendar**

  The date to give notice, not the date it renews.

- [ ] **Every NDA, read for what it does beyond confidentiality**

  No hidden non-competes, non-solicits or grants of rights.

- [ ] **The lease, and any personal guarantee**

  In New York City, check whether a good guy guarantee is actually good guy in its operative text.

## People

- [ ] **A signed invention assignment and confidentiality agreement from every employee and contractor, dated before they started**

  The single most common gap found in diligence, and free to prevent.

  > The early designer or freelance developer whose work is still in the product is the one to chase first.

- [ ] **Offer letters, and the written pay notice New York requires at hiring**

  Rate, basis, payday and employer details, signed. In English, and in the employee's primary language where the state Department of Labor publishes a template in it; English alone is compliant where it does not.

- [ ] **Written contracts with freelancers, with the contents New York's freelance law requires**

  Names and addresses, services, value, rate, payment date, invoice date; a copy to the freelancer; kept for six years.

- [ ] **Job postings with pay ranges**

  Required in New York for jobs, promotions and transfers.

- [ ] **The state coverages: workers' compensation, disability, paid family leave; and unemployment insurance registration**

  All required before the first day of the first employee.

- [ ] **A short handbook, the annual harassment prevention training record, and the paid sick leave policy**

  Required of every New York employer, whatever its size.

- [ ] **A departure file for anyone who has left**

  Last day, equity outcome, property and access returned, release where appropriate.

## Brand, product and data

- [ ] **The trademark clearance report and the filed application**

  Word mark first, in the name of the company, for the goods and services actually offered.

- [ ] **The domain, repository and every account in the company's name**

  With company email as owner and recovery, credentials in a shared secure manager.

- [ ] **The open-source inventory**

  Each component in the product and its license.

- [ ] **A privacy policy and terms of use that describe the current product**

  Revised when the product, the vendors or the AI tooling change.

- [ ] **Copyright registrations for anything you would want to enforce**

  Core software, key content, brand artwork.

- [ ] **The one-page AI-use rule**

  Approved tools, what may be entered, a person reviews what matters.

## Money

- [ ] **Every SAFE, note and share subscription, with the board (and where needed shareholder) consent approving it**

  And a running model of what founders own after conversion.

- [ ] **The federal notice filing within fifteen days of the first sale, and whatever New York requires for the exemption you used**

  Routine, inexpensive, forgotten constantly. New York's requirement depends on the exemption, so check the Attorney General's current process.

- [ ] **Financial statements, tax returns, and insurance certificates**

  General liability, the state coverages, cyber if you hold customer data, directors' and officers' once there are outside directors.

- [ ] **The bank account in the company's name, with company and personal money never mixed**

  Tangled finances are the first thing raised by anyone arguing the entity should be ignored and the owners held liable.

THE ESSAYS BEHIND THIS

## Founder Agreements: The Conversations You Need to Have Before Day One

clemenzalaw.com/insights/founder-agreements-conversations

## Structuring Your Startup: LLC vs. Corporation

clemenzalaw.com/insights/startup-structure-llc-vs-corporation

## What a Fractional General Counsel Actually Does, and When Your Company Needs One

clemenzalaw.com/insights/what-a-fractional-general-counsel-does

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*The current version of this checklist is kept at* clemenzalaw.com/reference/startup-legal-checklist